

1 MR. ROGERS: I think what, ladies and gentlemen, with
2 all due respect, what Chairman Hill has enumerated is kind of a
3 concern to us, is that on one hand we are told that you respect
4 the Commission, and the general public, and we have heard from
5 the general public time and time, historically again, that the
6 general public respects our sovereignty.

7 And if you define sovereignty to be the notion that you
8 can secure your own future, and determine your own future --.

9 CHAIR JAMES: Excuse me, let me interrupt just a
10 minute. For the record, and we need it verbally, would you
11 please go ahead and state your name, and organization so that we
12 can have it?.

13 MR. ROGERS: My name is Tom Rogers, I'm a consultant to
14 the National Indian Gaming Association. As I was -- I'm also an
15 attorney.

16 COMMISSIONER LANNI: Excuse me, sir, are you also an
17 attorney?.

18 MR. ROGERS: Tax attorney.

19 The reason I'm highlighting, as I was saying, with
20 regard to sovereignty, just in like in any, in our civil society,
21 sovereignty being defined to secure and attain your own future,
22 we are told that.

23 But then we are told that we will impose these
24 obligations upon you, and we will determine your own future. As
25 Mr. Hill has said, time, and time, and time again, what happened
26 with the Communication Workers of America, 600,000 members, they
27 do not consider themselves isolated, they do not consider
28 themselves somehow numerically significant.

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1 They entered into a voluntary arrangement, a voluntary
2 arrangement. Dr. Moore, you would understand that, because you
3 are a businessman. It was a voluntary arrangement. And we feel
4 comfortable.

5 You don't hear a litany of -- I don't see too many
6 disgruntled employees behind us who are upset with the current
7 worker's state of affairs. And you look down, and I know that
8 there seems to be, I can tell by the remarks, that there seems to
9 be an absence of a knowledge base to work on as involves what are
10 the employee rights on reservation tribal casinos.

11 I draw the -- .

12 CHAIR JAMES: Excuse me just a minute. How do you
13 answer the empowerment question, how do you answer the question,
14 and I'm really trying to have a thoughtful discussion on this
15 subject.

16 How do you handle the empowerment question for the
17 woman who is changing bed linen at the Foxwoods casino, is she
18 empowered to come together with other workers there to form a
19 union?.

20 And I understand that you are protecting the interest
21 of the tribes, but I'm asking a different question.

22 MR. ROGERS: Let me try and respond. Every casino is
23 just like every other commercial casino, would have HR, human
24 resources policies in place, grievances procedures in place to
25 address concerns such as that.

26 Also I think a lot of people, like I said, I draw to
27 your attention, and if you would care to, I would provide it to
28 the lawyers here, here is an excellent Law Review article, and it

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1 is titled: Application of Federal and State Labor Unemployment
2 Laws to Tribal Employers.

3 Specifically with regard to your question. When you
4 look at the, just like the Civil Rights Act, 1964, the Indian
5 Civil Rights Act, 1992 Supplement, provides that no Indian tribe
6 in exercising powers of self-government shall deny to any person
7 -- it doesn't say any Indian, any person within its jurisdiction,
8 the equal protection of its laws, or deprive any person of
9 liberty or property, without due process of law.

10 Now, you go down, Mr. Wilhelm made the remark that none
11 of these labor laws apply to tribal organizations, tribal
12 governments. That is not factually correct.

13 If you wanted a copy of this Law Review article, just
14 recently written, it walks you through, the summer of 1995, put
15 together by two very known attorneys on Indian law, it walks you
16 through the American Disabilities Act, Fair Labor Standards Act,
17 Family Medical Leave Act, the Title 7, and methodically -- with
18 cases, citing the case law, the difference in the circuits.

19 There is a discrepancy in the circuits between the 9th
20 circuit, the 8th circuit and the 10th circuit as to what should
21 apply on Native American reservations.

22 So like I said, I think what we are talking about here
23 is very anecdotal.

24 CHAIR JAMES: Let me ask you this, and I'm sorry to
25 belabor this point, but I like you Richard, am going through a
26 process of trying to sort all of this out..

27 If I were that woman who is changing sheets, I have
28 equal protection under tribal law. Do I have -- but U.S. law
29 does not apply?.

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1 MR. ROGERS: No, that is not true. Once again -- .

2 CHAIR JAMES: No, I'm asking.

3 MR. ROGERS: That is right, okay. Like I said, I think
4 there is a myriad of labor laws that have been crafted over our
5 nation's history. Here is but a sample of 8 to 10, and each one
6 is different, and each circuit is a little bit different.

7 So the application of those laws, in most
8 circumstances, in most, and this is a generalization as you had
9 referenced, Mr. Wilhelm, but most of those laws are enforceable
10 on Native American reservations. Title 7 is not one. It has been
11 held.

12 And one other thing, ladies and gentlemen. When you
13 look at the legislative history in most of these laws, it was the
14 intent, or not the intent of Congress to exempt the tribes, or
15 not exempt the tribes. Sometimes it is silent. You are
16 absolutely right, Mr. Wilhelm. Sometimes the law is silent as to
17 whether this should be applied.

18 Sometimes the contract should be interpreted against
19 individuals who drafted the contract. But in other instances it
20 specifically --it was Congressional intent to carve out an
21 exemption for native americans and their governments.

22 And you don't have to take me, because I'm biased, I
23 represent the Indian Nation. I'm a Black Foot tribal member, so
24 I have a bias, just like everybody around this table.

25 But here is a law -- .

26 CHAIR JAMES: We have never seen that.

27 MR. ROGERS: But here is a Law Review article, and you
28 can choose to do with it what you want.

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1 COMMISSIONER MCCARTHY: To help our understanding here,
2 your response to the Chairperson's question was what? I didn't
3 get it. The question is, does the woman cleaning the hotel room
4 at Foxwoods have the right to organize a union in that facility?.

5 MR. ROGERS: That, in all honesty Mr. Mc Carthy, I
6 can't respond to that specific issue, I don't work at Foxwoods, I
7 do not have a knowledge base with regard to what specifically
8 Foxwoods casino has with regard to their policy.

9 Sir, if you want --.

10 COMMISSIONER MCCARTHY: Let me modify the question.

11 MR. ROGERS: Okay.

12 COMMISSIONER MCCARTHY: Do you have a list of tribes
13 that have gambling casinos that in their self-governance rules
14 expressly allow union organization to occur?.

15 MR. ROGERS: Not at this point in time, sir, we do not.

16 COMMISSIONER MCCARTHY: There are no tribes that permit
17 that in their tribal laws?.

18 MR. ROGERS: That is not what I said, and that wasn't
19 your question.

20 COMMISSIONER MCCARTHY: What is it you said?.

21 MR. ROGERS: Your question was, do I have a list at
22 this point in time.

23 COMMISSIONER MCCARTHY: Do you have knowledge of any
24 tribes that in their tribal laws permit union organization?.

25 MR. ROGERS: In their tribal law, that I can't speak
26 to, sir, not at this point in time.

27 COMMISSIONER MCCARTHY: Is that information you could
28 --.

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1 MR. ROGERS: Obtain, yes. I think we will continue to
2 go around this table here, you know, because our knowledge base,
3 once again -- .

4 COMMISSIONER MCCARTHY: Well, that would be helpful to
5 our understanding, because we are in a process here that is
6 evolving, of really trying to appreciate these relationships.

7 MR. HILL: Can I just -- it doesn't seem that the
8 rotation, we are going around in circles here. But if you could
9 put in writing what your specific questions are we will be happy
10 to respond to them.

11 I mean, it seems like we are not getting anywhere.

12 CHAIR JAMES: I really don't think we are going around
13 in circles. We are really struggling with these issues, and we
14 have you here as experts, and it is very helpful to us to have
15 the opportunity. And sometimes when you ask these questions in
16 writing, and you get back a very legal answer it doesn't get at
17 the nuance.

18 And so that is one of the reasons the face to face
19 conversation is so vital, and so important. And that is why we
20 ask witnesses to be in the well, and to testify publicly.

21 MR. HILL: With all due respect, I'm not an attorney,
22 and I think you are getting into a lot of legal issues here, in
23 terms of what the responsibilities are, and it goes back to the
24 specific Acts where there is exemptions, where there is not
25 exemptions, and those types of things.

26 So I think to give you a comprehensive answer it would
27 be most appropriate if we could respond in writing. I just don't
28 see us getting anywhere.

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1 CHAIR JAMES: Well, it has been very helpful to the
2 Commission, and I know that it seems time consuming, and like we
3 are not getting anywhere, but our knowledge base is increasing.

4 MR. HILL: I would talk with you all day on this, but I
5 don't think we are getting to the merits of the specific issues
6 that Mr. Wilhelm is raising.

7 COMMISSIONER MCCARTHY: I have one other question as
8 part of what I was trying to gather, understanding here.

9 And I really think there are a lot of unsettled issues,
10 and it may be that members of the Commission differ on whether
11 some of these federal laws should be applicable or not..

12 We are searching here to try to gain an understanding
13 at this point. In those circuit court decisions that you
14 mentioned, I take it a tribe, or maybe more than one tribe, are
15 parties to that litigation?.

16 MR. ROGERS: Yes, I mean, you have --expanding upon
17 what Chairman Hill, and also responding to yourself, Mr.
18 McCarthy, we all want you to make an informed decision.

19 But what I can tell from the table here is we are
20 dealing in a lot of anecdotal observation, either observations
21 that you have historically, but once again I draw attention, in
22 responding to your question, Mr. McCarthy, you will see that when
23 these cases are referenced, you will see that some of the tribes
24 have been parties to the suits, you will see that a decision has
25 come down.

26 And, like I said, there is a disagreement between the
27 circuits. But what you are referencing, and what this Commission
28 is experiencing now is building off a knowledge base, limited
29 knowledge base, of what Indian society and culture is all about,

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1 and how it interacts with the general populace, and interacts
2 with the federal government.

3 COMMISSIONER MCCARTHY: Let me see if I can complete my
4 questioning here. So I take it there would be specific Indian
5 tribes in the litigation that you have cited, the three circuits
6 disagreeing on certain kinds of -- .

7 MR. ROGERS: Applicability and --.

8 COMMISSIONER MCCARTHY: -- labor, social insurance type
9 laws, as to whether they are applicable or not.

10 MR. ROGERS: To tribes.

11 COMMISSIONER MCCARTHY: There are tribes denying that
12 those federal laws are applicable?.

13 MR. ROGERS: Yes.

14 COMMISSIONER MCCARTHY: Is that the posture in those
15 court decisions?.

16 MR. ROGERS: It is a point of contention whether, you
17 know, the American Disabilities Act, and the Family Medical Leave
18 Act would apply to the Native American --.

19 COMMISSIONER MCCARTHY: So the position of the tribes
20 on a number of these is fairly universal, it is whether or not
21 particular circuit courts may agree or not agree that federal law
22 is applicable?.

23 MR. ROGERS: Well, I don't know about particular
24 circuit courts, that is -- no, I mean --.

25 COMMISSIONER MCCARTHY: Well, you cited three circuit
26 courts that are differing in their opinions on a similar issue?.

27 MR. ROGERS: Right.

28 COMMISSIONER MCCARTHY: My only -- what I'm trying to
29 understand here is are there examples of tribes that have said,

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1 yes we wish to adopt unemployment insurance, the right to
2 organize, whatever it may be in this body of laws, which has
3 grown up in this country -- .

4 MR. ROGERS: Right.

5 COMMISSIONER MCCARTHY: -- now over the last century.

6 MR. ROGERS: Right.

7 COMMISSIONER MCCARTHY: Is there that kind of compiled
8 knowledge that you could share with us, so that we could get a
9 more accurate opinion as to what has been subscribed to?.

10 MR. ROGERS: Mr. McCarthy, no there is not a compendium
11 at this time, but once again, NIGA would want you to make an
12 informed decision, and we could compile that information so that
13 you could make a more informed decision.

14 Expanding a little bit, Commissioner McCarthy, we heard
15 time and time again, as we enter the '80s, I mean, leave the '80s
16 and '90s, and move into the new millennium, is that decisions
17 should be made at a local level.

18 Even Chairwoman Kay James has referenced that in a
19 recent news article, and that best decisions are made at the
20 local level, and that you shouldn't have dictates, you know, as
21 being former Lieutenant Governor.

22 COMMISSIONER LEONE: There are some limits to that, and
23 sometimes, in fact even anecdotal information is powerful. And I
24 didn't want to get back into this, but I will for two reasons.

25 One is, I like to make informed decisions, so I would
26 like to know what the information is that if I had it, I would
27 use it against you. That is an earlier point that Mr. Hill made
28 that troubled me a lot.

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1 Second is, we are talking about the rights of people
2 here, and whether or not the laws of the United States apply. I
3 will give away my age here, but the first time I visited the
4 great state of Virginia, I was deeply affected by the fact that
5 it was filled with segregated facilities.

6 And I asked my parents a lot of questions about that.
7 I actually think that trip and subsequent trips to their best
8 friends home had a great impact on the course of my life.

9 Now, people in Virginia argued at that time that these
10 decisions are best left to the local government. And that there
11 was a strong cultural bias, and history behind those things.

12 Those are emotional and inflammatory issues, but I
13 think that the independence of states, or tribal governments, or
14 cities, is subject to the laws of the United States. And we are
15 talking about how these cases are brought before the Courts.

16 So I don't think we ought to start with a premise that
17 this Commission has no responsibility to talk about what sort of
18 federal laws ought to be applicable. I think just the opposite
19 is true. That is our most profound responsibility, is to
20 recommend to the federal government what sort of laws ought to be
21 in place, and administration ought to be in place to effect
22 gambling in this country.

23 CHAIR JAMES: And, Richard, just for the record,
24 because I have heard that quoted back about three or four times
25 now, even as the strong federalist that I am, there are certain
26 decisions, there is an appropriate role for the federal
27 government, and there are things that the federal government
28 should do.

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1 Certainly Richard has cited one of those, and there
2 are, indeed, others. I think we have to proceed with caution
3 when we go in that direction, by the same token.

4 MR. ROGERS: Can I make one response to Mr. Leone? .

5 Mr. Leone, I agree with what you are saying, I think
6 the question is a matter of degree. I think when it comes to
7 discrimination and segregation, the Native American Population
8 takes a back seat to no one.

9 You saw the President's -- even your own President's
10 Race Commission Report, which was issued last fall said that we
11 have the lowest, not some of the lowest, not near the lowest, the
12 lowest. You walk through the demographics, suicide, homicide,
13 diabetes, alcoholism, walk through them.

14 Read the President's -- has anybody read the
15 President's Race Commission report?.

16 COMMISSIONER LEONE: Yes, I read it.

17 CHAIR JAMES: Yes.

18 MR. ROGERS: That is good. Then that is what -- and
19 when you talk about -- we just want to know what the rules are.
20 We are told that there are federal laws.

21 There are 600,000 workers of CWA did not have a
22 problem. They voluntarily entered into an agreement with the
23 California Tribes -- .

24 COMMISSIONER WILHELM: What California Tribes?.

25 MR. ROGERS: Well, that is 600,000 -- Mr. Wilhelm, that
26 is 600,000 workers, that is a significant --.

27 COMMISSIONER WILHELM: No, that is not 600,000 workers,
28 that is the membership, nationally, of the Communication Workers
29 of America. It is not 600,000 tribal -- .

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1 MR. ROGERS: Well, that is what is reported in the
2 media, Mr. Wilhelm, that is all I can-- and I have the article
3 for it.

4 CHAIR JAMES: Well, one thing this Commission won't do
5 is rely on the media, with all due respect, for its -- .

6 MR. ROGERS: Well, they are the four the state.

7 CHAIR JAMES: Absolutely. Commissioner Dobson?.

8 COMMISSIONER DOBSON: Changing the subject, and I'm not
9 sure if we were through with it, but -- .

10 CHAIR JAMES: I don't think John is ever going to -- .

11 COMMISSIONER DOBSON: Mr. Rogers, Mr. Hill, can you
12 tell us if there has been any reduction in federal subsidies for
13 the tribes that have been most successful with gaming operations,
14 specially the Pequot tribe where I understand the revenues are
15 something on the order of two billion dollars a year.

16 I don't know whether that figure is right, but it is a
17 lot of money. And there are other tribes that have been so
18 rewarded.

19 Can you tell me if there has been any change in the way
20 the federal government subsidizes tribal activities?.

21 MR. ROGERS: I think, Mr. Dobson, and I draw to your
22 attention, and hopefully it has been part of the record, recently
23 the Senate Indian Affairs Committee conducted a Hearing, and an
24 informative seminar for members and staff, and it was about three
25 weeks ago.

26 And they released a report, it was a Congressional
27 Budget Committee document, drafted on March 1998 by Mr. Roger
28 Watt, who was a member of the Congressional Research Service
29 which shows trim lines of federal spending on indian matters for

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1 the last, I would say, about a decade, specifically focusing on a
2 snapshot from 1995 to the current.

3 Across the board, and these are not my words, it is a
4 matter of the Congressional Record, across the board, spending on
5 Native American programs, across the board, BIA, Indian Health
6 Services, highways, child care, you name it, we have
7 disproportionately suffered cuts, reductions in the rate of
8 growth, and our spending programs, compared to the rest of the --
9 .

10 COMMISSIONER DOBSON: May I clarify what you just said?
11 Reductions in the rate of growth?.

12 MR. ROGERS: Right.

13 COMMISSIONER DOBSON: No reductions in the absolute
14 amount?.

15 MR. ROGERS: Well, no. In constant dollars, when you
16 look at the constant dollars, because you have to factor in the
17 inflation component, when you look at the constant dollars, we
18 have experienced more cuts than any other segment of society, and
19 that is a matter of Congressional Record, and it was filed here
20 about three weeks ago.

21 You look at, even with the large -- we all know about
22 what happened about the Transportation Surface Act, last bill,
23 ICE-T, which was enacted last year, 200 to 300 billion nation
24 wide was provided to the rest of society.

25 We barely kept pace with inflation. When you look at
26 every spending program that affects Native Americans, we have had
27 more cuts than any other segment of society. And that is a
28 matter of record.

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1 COMMISSIONER DOBSON: You are talking about across the
2 board now. Would you focus specifically on those tribes that
3 have been the most successful. Not reductions in the rate of
4 growth, I'm talking about those situations where there is
5 obviously been a very, very lucrative gambling operation.

6 Essentially are you telling me that the federal
7 subsidies remain pretty much in place? .

8 MR. HILL: I have been to, when I was past Chairman of
9 my tribe in Wisconsin I remember going to these budget hearings.
10 And, you know, it is kind of a silly process, actually, because
11 you have all the tribal leaders coming in to fight for a pie that
12 is already too small, and make justifications for their
13 particular allocation.

14 If you go back into time, and we -- that is how we
15 think about our communities, there are over 800 treaties, but
16 there is probably over 800 broken treaties, which refer back to
17 land taken, minerals taken, rights taken, and the like, that have
18 never been compensated for.

19 Now, when you go to the successful casinos, in terms of
20 their success, I mean, you have to look at it over time, as well.

21 Now, it didn't take ten years to create all these
22 problems in our community, it took just several generations to
23 create a dysfunctional nations, which we are trying to recapture
24 a lot of these things with those gaming dollars.

25 So to build the infrastructure for the communities,
26 from the bottom up again, it takes a lot of revenue. One
27 instance I can respond to you in terms of did a successful tribe
28 turn down their allocation.

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1 I think I read a story about the Oneidas in New York,
2 where they chose not to accept their allocation, but what they
3 chose to is to direct that money to a tribe that did not have
4 gaming, and wanted their dollars to be used for that.

5 The other reason that the tribes don't want to sever
6 that tie with the federal government is because, you know, in the
7 '50s there was a termination, and severing the responsibilities
8 and the fiduciary and trust responsibilities the federal
9 government had with those nations, and were subsequently somewhat
10 terminated, and over in the '70s they were brought back to be
11 recognized as a federal Indian nation, again.

12 So I think that the tribes' concern is that if you
13 sever that relationship then the responsibilities that the
14 federal government have not been lived up to, may be severed.
15 So, therefore, they do not want to sever that relationship.

16 But there is some discussion that maybe there is some
17 modification in terms of those dollars being allocated for tribal
18 purposes. But you get to realize, over time, that tribes have
19 been -- they have never been really funded on their need, they
20 have been grossly under funded on their need over time.

21 And so we have never been funded on a needs basis. We
22 are funded -- .

23 COMMISSIONER DOBSON: I think the answer was no. And
24 if that is the case, whether it is the case, I would like to
25 request that this Commission seek, if we don't already have the
26 information, the records in terms of the support that is going to
27 the various tribes, and look at a comparison, perhaps, over the
28 last ten years.

29 Is that information in our records so far?.

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1 CHAIR JAMES: Not in that form, and we are going to get
2 that kind of information.

3 COMMISSIONER BIBLE: And I think what you are
4 suggesting is to take that information and do an overlay with
5 gaming revenues that are available to the tribes to see if the --
6 .

7 CHAIR JAMES: Do you understand that for the average
8 American, and this is what we are trying to struggle with here,
9 sovereign nation, yes. Certain laws do not apply, should not
10 apply because of that sovereign nation status.

11 However, financial assistance, yes. And so don't want
12 to break that relationship with the federal government. However,
13 so I'm trying to put it in those terms so that -- because we are
14 speaking to not just this Commission, but to a far larger
15 audience who is struggling with, and trying to understand these
16 very difficult issues.

17 Did you want to clarify -- .

18 COMMISSIONER DOBSON: Every agency in this country that
19 receives federal government immediately finds out that there is
20 strings attached to, I mean, receives subsidies from the federal
21 government, finds out that there is strings attached..

22 It involves regulations, it involves laws, it involves
23 auditing and accountability. And they go together, and I just
24 think we need to look at that relationship.

25 MR. HOGAN: Madam Chair, I wonder if I could respond? .

26 CHAIR JAMES: Let Rick do that, then we are going to
27 turn to your presentation.

28 MR. ROGERS: One thing that is disturbing, Mr. Dobson,
29 and once again we are told we are sovereign, and then we are told

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1 what to do. I mean, there is the word, and then there is the
2 action.

3 I don't remember, and as Rick referenced, the Oneidas
4 in New York recently just signed an agreement with the Bureau of
5 Indian Affairs to redirect their 2.7 million dollars in
6 assistance, 2.7million dollars in assistance to other tribes.

7 Now, Mr. Dobson, you are from Colorado. I went to
8 school in Colorado. Colorado is doing phenomenally well. Up and
9 down the front range, they have done so well since the '80s..

10 But I don't see the sovereign state of Colorado sending
11 their revenue surplus to the State of Louisiana. I don't see the
12 sovereign state of Colorado sending their revenue surplus to the
13 sovereign state of Mississippi.

14 I don't see the sovereign state of Colorado sending
15 their revenue surplus to the almost increasing shortfall in the
16 state of Nevada. That is what disturbs us.

17 Let me finish, Mr. Dobson. The reason, and this kind
18 of gets into the trust discussion. Trust is so important in
19 negotiations and discussions. I do some work in Northern Ireland
20 where trust has always been a hard component to evolve to..

21 But the reason why there is this level of mistrust with
22 society at large, and governmental organizations at large, is the
23 items such as this. We have an incredible, incredible backlog.
24 I mean, over two-thirds of our schools on reservations are over
25 30 years old. Our unmet needs are phenomenal, phenomenal.

26 And yet when we finally achieve the American dream,
27 sir, that we all want, we want a nice house, a car, somewhere
28 that we can send our kids to college, only 50 percent of us
29 graduated from high school, high school..

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1 And yet when some tribes do well, and some tribes, that
2 is what needs to be emphasized, according to a GAO study in 1996,
3 only six facilities, not six tribes, but six facilities are
4 responsible for almost 40 percent of the gaming revenue.

5 Pine Ridge Indian Reservation in South Dakota is a
6 double-wide trailer. A double-wide trailer. And so when certain
7 tribes do phenomenally well it is, you know, you are just doing
8 too well. All we are trying to do is achieve the American dream
9 and make a better life for our citizens and our tribal members.

10 And yet when we do well, you know what? Well, you are
11 just doing too well, sir. So we are going to take that money and
12 we are going to redirect it.

13 There has been an examination I draw to your attention
14 about the tribal priority allocation. It has been an ongoing
15 debate with Senator Gorton from Washington. And I draw to your
16 attention to that Congressional Record as to how the tribes are
17 spending their money, and how they are trying to redirect it to
18 certain other needs.

19 But expanding upon the question, historically, that Mr.
20 Leone was talking about, we have an incredible problem being
21 Native Americans. I'm a Black Foot tribal member, with trust,
22 trust. And what concerns us is every time that we have -- you
23 name it, the Black Hills, you name any resource that we have ever
24 latched onto, and the only thing that has worked for us in a
25 small measure to date has been gaming..

26 Well, guess what, somebody wants it now. Somebody
27 either wants to impact, you know, enter into our decision making
28 with regard to workers, or they want to say, you know you are
29 doing too well, so we want to shift some of this money over here.

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1 If the state lottery in Colorado is doing well, or
2 wherever it might be, are they cutting any checks to the
3 different states? Even some of the tribes have done revenue
4 sharing amongst the tribes.

5 There was recently a case where one of the tribes sent
6 a 50,000 dollar check, a 50,000 dollar check to another tribe.

7 COMMISSIONER MCCARTHY: Madam Chair?.

8 CHAIR JAMES: Please.

9 COMMISSIONER DOBSON: I need to answer what you just
10 said, sir. First of all, obviously, if the sovereign state of
11 Colorado receives money from the federal government it has to
12 account for it, and there are laws that apply to it, so I don't
13 think that illustration is relevant.

14 But in the case of the Pequot tribe, for example, it is
15 my understanding that there are 900 some members of that tribe.
16 If the revenue from gambling for that tribe is a billion dollars
17 or more, or half that, or a third of that, I think we have an
18 obligation, in this Commission, to look at that and to report the
19 results of that examination to the government, which asked us to
20 do this inquiry.

21 How much is enough? I don't think that is the issue. I
22 think the issue is the relationship here as a taxpayer, to the
23 money that is going to the various tribes, I don't believe that
24 has been discussed in the public record. And I think it is time
25 that we did so.

26 Excuse me, Mr. McCarthy.

27 COMMISSIONER MCCARTHY: That is all right. I just
28 wanted to comment that I think we were confusing state budget
29 surpluses, out of a growing economy with federal public

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1 assistance programs here. Reallocation of federal public
2 assistance programs to non-gaming tribes, so that at least in
3 some small part all the deficiencies you quite appropriately and
4 accurately outlined could be a little bit better addressed.

5 That is not the same as suggesting that budget
6 surpluses from Colorado be shipped down to Mississippi. Those
7 are two entirely different areas.

8 I just wanted to make this over-arching comment, if I
9 could. There are many wounds from the past that have not been
10 recognized by most Americans who are not Native Americans, and
11 have never appropriately been addressed.

12 There is a great deal of unfairness that has occurred
13 that most non-Native Americans will ever really grasp or
14 appreciate.

15 We have some sense of that, even though we have not
16 been the objects of that kind of terrible treatment. But it is
17 difficult to use that history when we are trying to address a
18 problem like whether federal laws on social insurance, or
19 anything that tries to make more fair, and more appropriate the
20 standard of living of the average American worker applicable
21 across the board at all circumstances.

22 This conversation started out addressing what are well
23 settled laws in this country. And we have this very odd
24 situation here, where we are trying to recognize what we failed
25 to do in the past, a non-Native Americans, and at the same time
26 not give away what laws that are now applicable, at least in
27 almost every corner of this nation, have been fought for and
28 established through blood, sweat and tears of a lot of people.

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1 So to have all of these, you know, the most basic laws
2 dismissed on the basis of total sovereignty is something that is
3 hard to digest, that is all. And somehow there has to be an
4 accommodation here that respects sovereignty, and at the same
5 time recognizes there are at least some areas that have to be
6 applicable to everybody that lives within our borders.

7 MR. ROGERS: Mr. McCarthy, I think that there is a
8 number of points, in response to your remark.

9 I think, once again, what we are arguing, or discussing
10 here, choose my words carefully, is a matter of degree. If you
11 look, you know, Senator Byrd always says on the Senate floor that
12 to remain ignorant of history is to always remain a child.

13 And I do not use history to imprison us, because you
14 will never get beyond that. But I should say it should serve to
15 inform you. If you look at the President's Race Commission
16 Report, even Mr. Bob Thomas, a Commission, said he was
17 embarrassed, embarrassed at his ignorance with regard to native
18 american law and affairs.

19 He says there was a misunderstanding as to the
20 uniqueness of Native American governments, and their evolving
21 debate in society.

22 What is disturbing to us, Mr. McCarthy, and I will be
23 very honest with you, is that no one really paid us much
24 attention until we started earning revenue. In all honesty, we
25 were out there, we were on the fringes of society, we were
26 isolated, no one really gave us much thought.

27 But now that we are making a way for ourselves, and
28 trying to achieve a future for ourselves, and more importantly
29 for our children, we are much more of a focus of debate.

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1 So I draw to your attention, sir, please, please read
2 the President's Race Commission Report, and you will be
3 astounded.

4 And one other point, and I'm talking about state budget
5 surpluses. Let's leave it at the federal level, forget about
6 your own, you know, institutional and state generated revenue.

7 Historically New York has always, Senator Moynihan
8 always has a survey on the dollars that New Yorkers send to
9 Washington, and the dollars they get back. They are always in
10 deficiency.

11 But you don't see Senator Moynihan introducing a bill,
12 you know, requiring that once again, Colorado which does well,
13 under this administration California has done phenomenally well.
14 Phenomenal.

15 Look at the Base Commission Closure Report. You were
16 supposed to have a base closed, it didn't close. Are you going
17 to trade that base in California for one in the south?.

18 So what I'm saying is, is that what we are suspicious
19 about, and I use that as an illustrative, what we are suspicious
20 about is that we are doing slightly better now, and some tribes
21 are doing well. But now we are the center of attention.

22 CHAIR JAMES: Please, this is a free flowing
23 conversation and the Chair is not going to recognize you.

24 COMMISSIONER WILHELM: Mr. Rogers, with regard to the
25 point you just made, why is attention being paid now. I have
26 heard that in a number of our hearings.

27 With respect to the issue of unionization, attention is
28 being paid now because now, unlike historically, the tribes have
29 a large number of employees who are not members of tribes. That

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1 is the answer to that, that is a quite a straightforward answer.
2 It is not a discriminatory answer, just a fact.

3 When this Indian gambling subcommittee of this
4 Commission visited the Gila River Indian community, I think it is
5 fair to say that those who went on the visit were extremely
6 impressed with what that tribe has done with respect to
7 developing itself, with respect to the use of resources that have
8 been generated.

9 I know Dr. Moore, in particular was, along with all
10 those that made the visit, extremely impressed. And yet on that
11 visit the tribal representatives explained that the employees at
12 its sand and gravel operation, currently run by a subcontractor,
13 which is a private company, thus subject to american labor law,
14 are presently unionized.

15 And the tribal representative explained that there had
16 been a labor dispute between the employees of the subcontractor,
17 and the subcontractor. And that the tribe exercised its
18 sovereignty so as to prohibit any picketing activity by those
19 employees, thus rendering a strike hopeless.

20 And, moreover, the tribal representative advised the
21 visitors that the plan is, using the resources that the tribe is
22 generating, to take over the sand and gravel business in a few
23 years. That is the tribe would take it over and get rid of the
24 subcontracting company, which of course it has a right to do..

25 And the tribal representatives advised the visitors
26 that at that time they would no longer recognize the union of
27 those employees.

28 Now, that is a snapshot of reality in Indian country,
29 as you well know. And I would just say to you, you just made a

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1 moving and I believe historically accurate appeal on behalf of
2 Native Americans.

3 And, yes, I have read the President's Report. In fact,
4 the labor movement was represented, was part of that Commission.

5 MR. ROGERS: We were not.

6 COMMISSIONER WILHELM: I didn't appoint it.

7 MR. ROGERS: I know. That is very telling, again.

8 COMMISSIONER WILHELM: My point is that the labor
9 movement's representative is vigorously in support of the issues
10 that you are talking about.

11 And yet it ought not be, Mr. Rogers, that the eloquent
12 and historically correct argument that you just made should then
13 be used to say, and yet the people that work for us, many of the
14 people that work for you in southern California fled oppression
15 and death in Central American countries..

16 I'm talking about the people who work for you now.
17 Many of them fled oppression and even death in Central America
18 and in Latin American countries, to come to this country to try
19 to find opportunity. Many of them, many of the people that work
20 for you are immigrants, many of them are poor people.

21 It ought not be necessary for the tribes to achieve
22 your goals, and to begin to overcome the historical wrongs that
23 have been done to Native American people, for you in turn to take
24 the wealth that you are generating, then to oppress other people
25 and deny them the empowerment that you want, and need, and
26 deserve, and should have.

27 That ought not happen, and it is not necessary.

28 MR. ROGERS: Mr. Wilhelm, with regard to the last
29 statement, I cannot speak to the facts of the case that you laid

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1 out, because I don't know if that is totally representative. But
2 what you just stated, I completely agree with, because that will
3 go to our own credibility with regard to how, as I said, with
4 regard to history. You should serve it to inform you, but not
5 imprison you.

6 And I agree with you on that one.

7 COMMISSIONER WILHELM: I join with you on that one.

8 COMMISSIONER LANNI: Mr. Rogers, if I may? A couple of
9 comments. I know you are the tax expert and I'm not, other than
10 the fact that I do pay taxes.

11 On the issue of federal taxes, when we write a check to
12 the federal government, whatever Washington does with that money,
13 it may well go back to Louisiana, or even go to Mr. Dobson's
14 state in Colorado.

15 And I also pay taxes in the state of California, so in
16 that regard, and I think Colorado has a state income tax. Do
17 they, Jim? Jim, does Colorado have a state income tax?.

18 COMMISSIONER DOBSON: Yes.

19 COMMISSIONER LANNI: So Colorado is a state that has
20 personal income tax, so he is paying a tax there, and you also
21 pay a federal tax. So in effect that money may well go back to
22 Louisiana. In fact, some of that money may well go back to the
23 native american tribes, and some of the programs that come from
24 the federal government.

25 So you are the tax expert, but I think on that one you
26 are incorrect.

27 On the area of trust, and this is what is bothersome to
28 me. I have an interesting background. My mother was actually

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1 born on an indian reservation in Sioux Falls, South Dakota. Not
2 Indian, Irish-American, but born on an Indian reservation.

3 I have always had a great affinity for the native
4 americans, and fully understand the plight that they have. Not
5 living it, I can relate to it, but I can't relate to it from
6 having lived through it.

7 I honestly think that your association has done a
8 disservice to yourselves, and probably made amore negative view
9 from people that had a more positive view about the plight that
10 the native americans have.

11 I, for one, favor Indian American gaming, I have no
12 problem with it, I have said that publicly. I have some questions
13 about the regulatory process. I have some questions about
14 participation, as I raised earlier with Mr. Hill about the
15 problem of pathological gambling that needs to be dealt with from
16 all sectors of gambling, in my opinion, which I always like to
17 say I do respect.

18 That to attack John Wilhelm, and to attack this
19 Commission as not being a Commission you can trust. I mean, you
20 go around this table and there are a number of us who disagree on
21 a number of subjects, but I must tell you, I for one, and I think
22 I probably speak for my fellow Commissioners, I trust each of my
23 fellow Commissioners.

24 I think they are decent people, they may well have
25 divergent points of view from mine, I have no problem with that.
26 Just because someone differs from your opinion shouldn't be a
27 reason to distrust them.

28 John has a very strong belief in the fact that someone
29 should have the right to organize a labor union. That is his

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1 responsibility, he was appointed to this Commission for that
2 purpose.

3 I raised a question that bothers me as an individual.
4 That if I were working on the Agua Caliente band of the Kiowa
5 Indians' facility in Palm Springs, and were terminated, sure you
6 have a human resources department in that particular tribe, but I
7 don't have the right to go to a California Court, or a federal
8 court outside the Indian reservation to question why I was
9 terminated.

10 I go back to the tribal council. I don't think that is
11 fair. Now, if I'm a tribal member I think it is quite fair. But
12 for those people who are outside I don't think that is fair. So
13 I have some differences in that regard.

14 But I do not oppose tribal gambling, I think it has
15 helped your people, and I think that is an advantage. What Mr.
16 McCarthy has certainly pointed out that the disgusting aspects of
17 what America did to the Native Americans, there is no doubt about
18 that.

19 I feel responsible for the fact that it happened. I
20 don't feel responsible, personally, for that fact, but I think we
21 have every responsibility to help your people.

22 I think to come before this Commission and attack the
23 Commission as a group that you can't trust, was ill conceived,
24 ill conceived. And I honestly think you have done a tremendous
25 disservice to your particular cause in doing that.

26 And to specifically attack Mr. Wilhelm, or as you did
27 before, Mr. Bible, I just think was very, very poor planning on
28 your part. That is really my only comment.

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1 CHAIR JAMES: With that I'm going to ask that we --
2 certainly, absolutely, would you like to --.

3 MR. ROGERS: I think with regard, identifying with you,
4 Mr. Lanni, once again, I'm not only Indian, I'm Irish..

5 But with regard to taxes, you know, Oliver Wendell
6 Holmes said taxes is what we pay to live in a civil society.

7 Now, you referenced the fact that your money that you
8 pay in either California or Nevada goes into the general revenue
9 fund in the Treasury, and it is disbursed out accordingly. But
10 you can't dedicate that revenue. Neither can tribe members.

11 We pay taxes too. I know that is alarming, and
12 surprising, but we do pay taxes. I pay taxes every year.

13 If you look at a recent report that was issued by
14 Governor Gary Locke of the state of Washington, and a number of
15 Indian Tribes, you would be surprised at the amount of taxes that
16 Native Americans pay in the state of Washington.

17 So I think I want to disabuse a number of-- because
18 that is some misinformation out there in the public debate that
19 Native Americans don't pay taxes. We pay a lot of taxes.

20 The second point with regard to trust, sir. I don't
21 think, to expand, and Chairman Hill will maybe clarify this, is
22 that we didn't say we don't trust you individually. I don't
23 think I never said to Mr. Wilhelm, I don't trust you, I don't
24 think I have ever said that Mr. Wilhelm.

25 What causes us concern, and I have never said that
26 about you, Mr. Lanni, and neither has NIGA. But what causes us
27 -- nor have we said that Ms. James, Chairwoman James you had said
28 previously, during the discussion, you don't trust us? You were
29 kind of raising that question.

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1 That is not the issue. What we look at are actions.
2 What we look at are actions. What disturbs us, Mr. Lanni,
3 disturbs us, is that this Commission issued an opinion on
4 secretarial procedures, secretarial procedures.

5 If I remember correctly, the charge of this Commission
6 was to study, not insert themselves in the process, not involve
7 themselves in the process.

8 Like any, when you are observing anything, whether you
9 are an academician, you study that. To enter into the process is
10 to change that environment.

11 But yet, on Internet, where we were at a severe
12 disadvantage, no letter was forthcoming from this Commission on
13 that issue. That disturbs us. That is an action, that is not a
14 word, that is an action.

15 We look at the first Web site that this Commission put
16 out calling us defeated nations. Defeated nations, or more
17 importantly, merely private associations. When the NGA comes up
18 here, ask them if they feel the state of Montana, or North
19 Dakota, is considered, perhaps, a private association.

20 That is what -- I'm talking about actions, Mr. Lanni,
21 and we are not impugning your credibility.

22 CHAIR JAMES: I'm going to let this discussion go on
23 for about five more minutes, and then I'm going to exercise the
24 prerogative of the Chair and we will hear from the National
25 Indian Gaming Commission at that time.

26 COMMISSIONER LANNI: I think in response sir, you are
27 obviously a well spoken person, but anything that we say may be
28 considered an action, an action to reach for this microphone is
29 an action.

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1 I think that the request of the Commission was to ask
2 the government to wait a determination on the internet until we
3 had completed our particular study, which was required by
4 Congress, by the President, by the House and the Senate.

5 And we were not suggesting which way they should go in
6 that particular -- other than to wait, and that is an action, to
7 ask someone to wait.

8 But someone has asked me before, you know, are we in a
9 position, what are you going to do, are you going to allow this,
10 or allow that? We know we are not in a position to allow or not
11 allow anything.

12 We are merely here to study the social and economic
13 aspects of all legalized forms of gambling, and make considered
14 discussion, come up with considered recommendations to the
15 appropriate bodies representing the Native Americans,
16 representing the several states, representing the legislative
17 branch, and the executive branch.

18 That is our responsibility, it is our duty, and that is
19 not saying that we are taking action in that regard.

20 MR. ROGERS: In fact, that is what I would like to
21 expand upon. What we are arguing for, and asking for, begging
22 for, is consistency of treatment. You just referenced, and you
23 can read back your remarks to me, that you asked Congress to wait
24 on these secretarial procedures.

25 Then I would appreciate a letter from this Commission
26 to ask Senator Kyle, Representative Stearns, Representative
27 Goodlat, Mr. McCollum, to wait on their laws with regard to
28 Internet.

29 CHAIR JAMES: Rick, did you have any final comments?.

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1 MR. HILL: No.

2 CHAIR JAMES: Okay. With that I'm going to -- and I
3 thank you for your patience, and your agreeability just to allow
4 this dialogue to continue for the time that you did.

5 We are most interested in hearing from you. Thank you
6 so much.

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